

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

ERIC CHRISTOPHER FALKOWSKI,

Plaintiff,

v.

Civil Action No. 1:22CV58

BUREAU OF THE
FISCAL SERVICE,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION [ECF NO. 13]

On July 28, 2022, Plaintiff, pro se, filed a Complaint against Defendant Bureau of the Fiscal Service ("Defendant"). Compl., ECF No. 1. On the same day, Plaintiff filed a motion to proceed in forma pauperis. ECF No. 2.

Pursuant to 28 U.S.C. § 636 and the local rules, the Court referred the action to United States Magistrate Judge Michael J. Aloï for review, orders, and written reports and recommendations. On September 6, 2022, the Magistrate Judge entered a Report and Recommendation ("R&R"), recommending that the Court dismiss the action, without prejudice, for failure to prosecute. ECF No. 13.

The R&R informed the parties regarding their right to file specific written objections to the magistrate judge's report and recommendation. Specifically, the magistrate judge gave the parties fourteen (14) calendar days after being served with a copy of the magistrate judge's recommended disposition to file

ORDER ADOPTING REPORT AND RECOMMENDATION [ECF NO. 13]

"specific written objections, identifying the portions of the Report and Recommendation to which objection is made, and the basis of such objection." The R&R further warned them that the "[f]ailure to file written objections . . . shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals."

The docket reflects that the R&R was delivered to the Plaintiff by certified mail, return receipt requested, on September 9, 2022. ECF No. 14. The return was signed by Plaintiff and filed on September 12, 2022. ECF No. 14. To date, no objections to the R&R have been filed.

When reviewing a magistrate judge's R&R, the Court must review de novo only the portions to which an objection has been timely made. 28 U.S.C. § 636(b)(1)(C). Otherwise, "the Court may adopt, without explanation, any of the magistrate judge's recommendations" to which there are no objections. Dellarciprete v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold portions of a recommendation to which no objection has been made unless they are clearly erroneous. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

Because no party has objected, the Court is under no obligation to conduct a de novo review. Accordingly, the Court

FALKOWSKI V. BUREAU OF FISCAL SERVICE

1:22-CV-58

ORDER ADOPTING REPORT AND RECOMMENDATION [ECF NO. 13]

reviewed the R&R for clear error. Upon careful review, and finding no clear error, the Court **ADOPTS** the R&R [ECF No. 13]. The Court **DISMISSES WITHOUT PREJUDICE** the Complaint for failure to prosecute. Plaintiff's Motion to Proceed in Forma Pauperis is **DENIED** as moot. ECF No. 2. The Clerk is **DIRECTED** to enter judgment in accordance with this Order. This action is **DISMISSED WITHOUT PREJUDICE** and **STRICKEN** from the Court's active docket.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to counsel of record via electronic means and to the pro se Plaintiff via certified mail, return receipt requested.

DATED: November 21, 2022



THOMAS S. KLEE, CHIEF JUDGE
NORTHERN DISTRICT OF WEST VIRGINIA